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09/876,410	06/07/2001	Lynne Travis-Pence	1535-001	7310

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EXAMINER

PICKETT, JOHN G

ART UNIT

PAPER NUMBER

3728

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/876,410

Applicant(s)

TRAVIS-PENCE, LYNNE

Examiner

Gregory Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 5 and 18-20 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Species 1, Figures 1a-6b and Figure 10, Species 2, Figures 7a-8, Species 3, Figures 9a-9c.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 16 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Michael J. Persson on May 27, 2003 a provisional election was made without traverse to prosecute the invention of Species 1, claims 1-4, and 6-17. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5, 18, and 20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. The examiner would like to point out that while claims 18 and 19 were not mentioned in the telephone conversation as being directed to Species 2, the subject matter of the claims are directed only to the dual compartment, game feature of non-elected Species 2 and are therefore withdrawn from consideration.

### ***Claim Objections***

2. Claim 15 is objected to as depending from a later claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 7-9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (US 197,595).

Regarding claim 1, Brown discloses a container (Figure 1) that is capable of storing at least one candle and comprises a hollow base (A, B) having a bottom (A) and a side portion (B); a lid (C) having a top surface and a bottom surface (as shown, Figure 4), each dimensioned to rest upon the side portion (B); and the bottom surface of lid (C) having a compartment (c). The dimensions of Brown are such that they are capable of holding candles as claimed by the applicant.

As to claim 7, Brown discloses an outer surface of side portion (B) having a decorative design.

As to claim 8, Brown discloses a bottom surface with an alignment detail (e).

As to claim 9, Brown discloses a lip (e'') and extended portion (e).

As to claim 11, Brown discloses a top surface with an alignment detail (e').

As to claim 12, Brown discloses a lip (e'').

4. Claims 1, 2, 4, 6, 8-10, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Schultz et al. (US 5,879,151).

Regarding claim 1, Schultz discloses a container (Figure 4) storing at least one candle (1) and comprises a hollow base (10) having a bottom and a side portion (as shown, Figure 4); a lid (20) having a top surface and a bottom surface (as shown, Figure 4), each dimensioned to rest upon the side portion (as shown, Figure 4); and the bottom surface of lid (20) having a compartment (50). The dimensions of Schultz are such that they are capable of holding candles as claimed by the applicant.

As to claim 2, Schultz discloses compartment (50) as cylindrical in shape (Figure 1). Compartment (50) is capable of holding tea-light candles.

As to claim 4, Schultz discloses compartment (50), and depending on the size of the candle used, Schultz is capable of storing the candles in a stacking relation.

As to claim 6, Schultz discloses decorative designs (32).

As to claim 8, Schultz discloses alignment detail (62).

As to claim 9, Schultz discloses lip (40) and extended portion (54).

As to claim 10, Schultz discloses a chamfered portion (top portion of hollow base 10) and countersunk alignment detail (62).

Regarding claim 16, Schultz discloses a kit (Figure 4) storing at least one candle (1) and a container comprising a hollow base (10) having a bottom and a side portion (as shown, Figure 4); a lid (20) having a top surface and a bottom surface (as shown, Figure 4), each dimensioned to rest upon the side portion (as shown, Figure 4); and the bottom surface of lid (20) having a compartment (50). The dimensions of Schultz are such that they are capable of holding candles as claimed by the applicant.

As to claim 15, Schultz discloses circular open top and a single curved wall defining a substantially cylindrical shape (as shown, Figures 1 and 4).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 3 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schultz et al in view of James (US 5,660,281).

Regarding claim 3, the container of Schultz discloses the claimed invention except for the plurality of compartments.

James discloses that it is known in the art to place a plurality of candles in a container. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Schultz with a plurality of compartments since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

As to claim 14, the container of Schultz discloses the claimed invention except for the rectangular shape.

James discloses that it is known in the art to have a candle container that is rectangular in shape. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the container of Schultz with a rectangular shape

since changing the cross-sectional shape from a circle to a rectangle involves only routine skill in the art.

6. Claims 10 and 13 rejected under 35 U.S.C. 103(a) as being unpatentable over Brown.

Brown discloses the claimed inventions except for the chamfered portion in combination with a countersunk alignment detail. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Brown with a chamfered portion and countersunk alignment detail as claimed by the applicant since the examiner takes Official Notice of the equivalence of the lip-alignment detail and the chamfered portion-countersunk alignment detail for their use in the container closure art and the selection of any of these known equivalents to close the container would be within the level of ordinary skill in the art.

Applicant, of course, has the right to challenge this Official Notice in response to this decision and demand production of evidence in support thereof, provided such challenge is accompanied by adequate information or argument that, on its face, creates a reasonable doubt regarding the circumstances justifying the Official Notice. See *In re Boon*, 439 F.2d 724, 169 USPQ 231, 234 (CCPA 1971).

7. Claim 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Schultz et al. in view of applicant admitted prior art.



The kit of Schultz as applied to claim 16 above discloses the claimed invention except for the tea light candle. The kit of Schultz is a decorative glass fixture (see for example Col. 1, ll. 14-20).

Applicant admits that tea light candles are known in the art and that tea light candles are commonly placed in separate fixtures such as glass "tea lights" in order to illuminate the fixture. It would have been obvious to one of ordinary skill in the art at the time the invention was made to place a tea light in the kit of Schultz as claimed by the applicant in order to illuminate the fixture.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kaplan, Gaudet et al, Seidler, Culpepper, and Wohl et al disclose various candle containers. Rinnman, Phillips, Daenen, Steffes and DeMars disclose containers with reversible lids. Goserud discloses a container with a lid used to display an item. And Zefran discloses a container with a decorative lid.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for

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the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

*gpr*

Gregory Pickett  
Examiner  
June 2, 2003

*Mickey Yu*  
Mickey Yu  
Supervisory Patent Examiner  
Group 3700